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1 BEFORE THE CITY OF CHICAGO POLICE BOARD
2
3 IN THE MATTER OF
4 CHARGES FILED AGAINST
5 SERGEANT DUANE BENNETT) Case No. 13 PB 2827

6 30 North LaSalle Street
7 Suite 1220
8 Chicago, Illinois 60602

9 June 5, 2013
10 1:30 p.m.

11 PRESENT:

12 JACQUELINE A. WALKER, Hearing Officer

13 PATRICK POLK
14 Assistant Corporation Counsel
on behalf of the Superintendent;

15 DANIEL HERBERT
16 on behalf of the Respondent;

17
18
19 REPORTED BY:
20 PAMELA S. MORGAN, CSR
LICENSING NO. 084-001687

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1 I N D E X

2 WITNESS: DX CX RDX RCX
3 SERGEANT DUANE BENNETT 110 132 149 150
4 JEAN BENNETT 151 159

5 E X H I B I T S

6
7 SUPERINTENDENT NUMBER ID EVD
8 5 134
9
10 RESPONDENT NUMBER ID EVD
11 3 129
12 4 130

1 A. Duane Bennett. B-E-N-N-E-T-T.
2 Q. And, Mr. Bennett, you are employed by the
3 Chicago Police Department, is that correct?
4 A. Yes, I am.
5 Q. And please briefly describe your
6 employment history with the Chicago Police
7 Department?
8 A. I came on the police department on
9 May 22nd of 1991, I was assigned to the 21st
10 Patrol District. I worked in patrol there for
11 five or six years and then I was assigned to the
12 tactical team in the 21st District.
13 In August of 1998 I was promoted to
14 sergeant. I was assigned to the Sixth District on
15 the South Side. I worked there for two years and
16 then I left with my lieutenant there and
17 transferred to the public housing section.
18 I worked there for two years, touring the
19 housing projects, and then I transferred to the
20 Ninth District where I worked for a year, and I
21 went back to the public housing section and worked
22 there for another two or three years until they
23 closed the public housing section down, at which
24 time I transferred to the First District.

1 I was in charge of gang tactical unit in
2 the First District, primarily working in the
3 Harold Ickes Public Housing Projects, and I was
4 there for three years or four years, I believe the
5 last year I was there I transferred to the
6 watch -- the second watch and worked as a patrol
7 supervisor.
8 At that point I transferred to the Fifth
9 District and I worked there for four or five years
10 as a patrol supervisor.
11 Q. Okay. And what were your duties as a
12 patrol supervisor?
13 A. Well, you respond to in-progress calls,
14 you conduct investigations of -- for discipline of
15 police officers, and just make sure everything
16 runs smoothly on the streets, make sure everybody
17 is doing their job.
18 Q. Okay. And in your 22 years on the
19 Chicago Police Department, were you ever subjected
20 to drug tests?
21 A. Yes, several times.
22 Q. Okay. How many times, do you think?
23 A. Probably at least a dozen times.
24 Q. Okay.

1 Q. And how old are they?
2 A. My oldest son is 20, and my second oldest
3 son is 17, and my daughter is 13.
4 Q. And are they in school now?
5 A. Yes. My oldest just finished up at
6 Moraine Valley for the year. My 17-year-old just
7 finished Mount Carmel, he'll be a senior next
8 year. My daughter is currently in the seventh
9 grade.
10 Q. The one that just finished up at Moraine
11 Valley, where did he go to high school?
12 A. He went to Mount Carmel High School.
13 Q. Where do you live, what area of the city?
14 A. I live in Beverly Hills on the
15 South Side.
16 Q. And are you familiar with that area?
17 A. I grew up there. I've lived there my
18 whole life.
19 Q. And where did you go to high school?
20 A. I went to Morgan Park High School.
21 Q. Did you graduate from Morgan Park?
22 A. Yes, I did.
23 Q. When did you graduate?
24 A. 1982.

1 A. Maybe more.
2 Q. Twelve or more?
3 A. That would be my guess, yes.
4 Q. Okay. And obviously there was a positive
5 test for marijuana which is the reason that we are
6 before the Board today, correct?
7 A. That is correct.
8 Q. And other than that positive test, the
9 other tests that you have taken, have there ever
10 been any positive tests in the past?
11 A. Never.
12 Q. Are you married?
13 A. Yes, I am.
14 Q. How long have you been married?
15 A. It will be 21 years next week.
16 Q. And your wife is here today, correct?
17 A. Yes, she is.
18 Q. And what is her name?
19 A. Jean Bennett.
20 Q. How do you spell Jean?
21 A. J-E-A-N.
22 Q. Okay. And do the two of you have any
23 children?
24 A. We have three children.

1 Q. After high school what did you do? Did
2 you go to college?
3 A. Yes. I went to York Junior College in
4 York, Nebraska. I had a baseball scholarship
5 there. I stayed there for a year and then I
6 transferred to Oklahoma Christian University in
7 Oklahoma City, and played baseball there for three
8 years.
9 Q. Okay. I assume you played baseball in
10 high school as well?
11 A. Yes, I did. Football, also.
12 Q. And you said you graduated from Oklahoma
13 Christian University, correct?
14 A. Right.
15 Q. In 1987, is that what you said?
16 A. Yes.
17 Q. What was your degree in?
18 A. I have a bachelor of science in business
19 administration.
20 Q. After college what did you do?
21 A. I worked for a bank for a short period of
22 time, a year or so, and then I took a job with
23 Van Kampen Merritt, which is an investment banking
24 firm, I worked there for two years, and then I

1 took a job with the Mercantile Exchange and I
2 worked in S and P 500 pits and the Euro dollar
3 pits.
4 Q. In what year did you join the police
5 department?
6 A. 1991, May 22nd.
7 Q. Okay. And have you ever been disciplined
8 by the police department during your 22 years as a
9 police officer?
10 A. No, never been suspended or anything like
11 that.
12 Q. And you've received numerous awards,
13 isn't that true?
14 A. Yes, I did.
15 Q. Okay. And you've reviewed the
16 complimentary history that was produced as a
17 result in this case?
18 A. Right.
19 Q. Okay. And we are going to ask that this
20 exhibit be entered into evidence at the conclusion
21 of our case.
22 Based on that, it indicates that you have
23 67 total awards, isn't that correct?
24 A. Yes.

1 Q. Have you ever intentionally ingested
2 marijuana, such as putting it into food or
3 anything along those lines?
4 A. No, sir.
5 Q. Have you ever been exposed to marijuana?
6 A. Numerous times.
7 Q. Okay. Describe your exposure to
8 marijuana?
9 A. Well, on the police department we are
10 exposed quite a bit going into people's homes or a
11 lot of calls for kids in abandoned buildings, you
12 show up, they are in the building smoking
13 marijuana or conducting their illegal activities.
14 I also have a problem with my oldest son
15 with marijuana usage.
16 Q. Okay. And you were called down for a
17 drug test in this case, correct?
18 A. Yes.
19 Q. And is that part of the random drug
20 testing policy?
21 A. Yes.
22 Q. Okay. You weren't brought down for cause
23 or anything along those lines, correct?
24 A. Not that I am aware of, no. I was told

1 Q. Do you remember exactly what it says? If
2 not, I can --
3 A. I don't remember exactly but I know that
4 some awards are not on the electric printout that
5 were done before we went to electronics system, so
6 there actually should be more honorable mentions
7 than what's on there.
8 Q. But you've reviewed --
9 A. I reviewed that, yes.
10 Q. And all those awards that are indicated
11 on there, you won those awards, isn't that
12 correct?
13 A. Yes.
14 Q. And you indicated there are some awards
15 that you won that were not included on there?
16 A. When I was in the 21st District there was
17 a problem with getting our awards posted downtown
18 or whatever.
19 Q. Okay. Mr. Bennett, what brings us here
20 today, obviously, is a positive test for the use
21 of marijuana.
22 My question to you is, have you ever
23 used -- have you ever smoked marijuana?
24 A. No, I have not.

1 that it was a random drug test.
2 Q. And at some point you learned that there
3 was a positive result in that test, correct?
4 A. That is correct.
5 Q. And what was your reaction when you
6 learned that?
7 A. I was shocked.
8 Q. Why were you shocked?
9 A. Because I don't smoke marijuana.
10 Q. Okay. You provided a statement to the
11 Internal Affairs agency regarding your positive
12 test, correct?
13 A. Yes.
14 Q. And in there you discussed some exposures
15 that you had with marijuana, correct?
16 A. That is correct, some recent ones before
17 the positive test.
18 Q. Okay. And if you can describe for us --
19 or first of all, strike that.
20 What was your reason for providing these
21 exposures to the Internal Affairs agency?
22 A. Just to prove my innocence, let them know
23 that I had been exposed and maybe that that was
24 what caused the positive test.

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1 Q. Okay. And what exposures did you have
2 prior to this test?
3 A. Well, my son, the night before the test,
4 he had two of his cousins over and they swam in
5 the pool during the day, and at night I went to
6 bed because I had to get up, I had to be at work
7 at 5:00 in the morning, and during the night I got
8 up to use the bathroom and that's when I smelled
9 marijuana smoke. I went to the back of the house,
10 the stairs are in the back of the house, I went to
11 the back and I seen them getting in the pool, it's
12 like 2:30, three o'clock in the morning.
13 So I went down to my son's basement
14 bedroom, which is below my bedroom, and opened the
15 door, they had a towel rolled up that was --
16 apparently they had it pushed up against the
17 bottom of the door and there was marijuana smoke
18 inside the room. I went into the room, looking
19 around to see if I can find any evidence of it,
20 and I found like a little tin foil cigar pack
21 that -- I mean kids, they use that, they open up
22 the cigars and put marijuana and smoke it, so I
23 found the wrapper for that, but I didn't find any
24 marijuana, or they must have brought it outside

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1 that was the only instance in which he had ever
2 smoked marijuana in his room?
3 A. No, it's not the first time. My wife
4 told me that it happened before.
5 Q. Okay. And where is your bedroom in
6 relation to his bedroom?
7 A. Directly above it.
8 Q. Okay. And what type of house is it?
9 A. It's a raised ranch.
10 Now, he lives down -- his bedroom is down
11 in the basement, which we recently refinished, we
12 made a bedroom, a family room, everything. It's
13 got a low ceiling.
14 Q. Okay.
15 A. But I mean that's his room.
16 Q. Okay. And any other exposures that you
17 were exposed to prior to this drug test?
18 A. The end of June I went to a concert with
19 my brother, him and his friends were going to a
20 concert and somebody backed out, called me up, do
21 you want to go, I said I will go with, we went up
22 to the concert in Milwaukee, Wisconsin and there
23 was a lot of marijuana smoking going on there.
24 Q. Okay. How close was the smoking going on

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1 with them or whatever.
2 Q. Did you go and confront your son at any
3 point?
4 A. I looked around for about 20 minutes or
5 so, looking for stuff, and I went back upstairs
6 and woke my wife up, told her what was going on.
7 I don't really get along with the two
8 nephews' mothers, there's been some family
9 problems with that. So I woke her up and she said
10 that she would handle it.
11 Q. Okay. And which son was this? Is that
12 the oldest son?
13 A. My oldest son, James.
14 Q. Okay. And was that the first time that
15 you had ever caught your son smoking?
16 A. That was the first time I actually caught
17 him. I mean I suspected there was some problems
18 because his grades were -- I mean he started
19 drifting a little bit with his grades and quit
20 playing football, quit place baseball, quit
21 playing LaCrosse. So I thought something was the
22 matter but that was the first time that I actually
23 caught him smoking it.
24 Q. And have you since learned whether or not

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1 in relation to you?
2 A. I mean all around, the row in front of
3 us, behind us, it was like quite a few people.
4 Q. And who was playing?
5 A. Government Mule.
6 Q. Okay.
7 A. I had never seen them before. My brother
8 is a fan of theirs.
9 Q. How long do you think that you were
10 exposed to marijuana on that evening?
11 A. Well, the concert went on for at least a
12 couple of hours.
13 Q. And approximately how many days was this
14 prior to the drug test?
15 A. Two weeks, maybe. Ten days, two weeks,
16 something like that.
17 Q. Okay. And any other exposures that you
18 had?
19 A. I responded to a request for a
20 supervisor. A tactical unit in the Fifth
21 District, they didn't have a -- their sergeant was
22 unavailable, I responded on the radio, I said I
23 would come over to 110th and Michigan, they were
24 conducting a narcotics investigation at a tire

1 shop.
2 So it was raining, I showed up there,
3 went into the back of the building where they were
4 at, and they wanted a consent-to-search form
5 because the owner of the building had authorized
6 them to search but we have to document when we do
7 that type of thing.
8 So I didn't know that before I went over
9 there, I got over there, I said I don't have one
10 with me, I looked in my car, and they called their
11 lieutenant and he was en route bringing one.
12 Meanwhile, I asked them what was going
13 on. They said that they had observed some
14 individuals making hand-to-hand transactions in
15 the back of the tire shop, they approached for an
16 interview, they smelled strong smell of marijuana.
17 The owner came and asked him if they could search,
18 he said they could search, so that's why they
19 called for the consent to search.
20 Meanwhile, we are standing in the back
21 room where they were conducting their business and
22 there was marijuana smoke in the room back there.
23 Q. How long do you think you were exposed to
24 marijuana on that particular time?

1 inventoried, and it emits a strong smell of
2 marijuana to the point where we put like plastic
3 garbage bags over it, trying to knock the odor
4 down.
5 I hadn't really been the watch commander
6 much before that, but for a couple of weeks I was
7 because we were short, they changed the rule that
8 sergeants could work as a watch commander, so we
9 didn't have a lieutenant available and I was the
10 watch commander for several weeks prior to. I was
11 actually a watch commander the day I was called
12 down for the drug test.
13 Q. Okay. And after you had been informed
14 that the test resulted positive for marijuana, did
15 you take any steps to claim your innocence?
16 A. Yes, I did. I hired you first and then
17 after we gave the statement, I went to my doctor's
18 office and told him what had happened, and I asked
19 him about the medications I was taking, and he
20 says, well, you know, the medication -- he looked
21 it up on the Internet and said it could be a
22 false-positive. I said, well, I want to submit my
23 own urine test.
24 Q. And what medications were you taking at

1 A. Probably half an hour before I finally
2 left there. I mean I was there when they
3 searched, they found a bag of marijuana, package
4 of marijuana, and they found a pistol in the back
5 room.
6 Q. And when was that in relation to the drug
7 test?
8 A. Within a week or so before that occurred.
9 Q. Okay. Obviously when these charges were
10 filed, you had the ability -- or you've certainly
11 thought about possible explanations to this
12 positive test, correct?
13 A. Yes.
14 Q. And those exposures, are those part of
15 the reason that you believe may have caused a
16 positive test?
17 A. Yes, I believe that.
18 Q. Okay. And on the police department have
19 you been exposed to marijuana in any other ways?
20 A. Well, for like two or three weeks prior
21 to the positive test I was assigned as the watch
22 commander in the Fifth District and there's a
23 narcotic safe outside the watch commander's office
24 where they store the marijuana that's been

1 the time that you informed your doctor of?
2 A. I take a diuretic for border level high
3 blood pressure. I take Acetaminophen and
4 Ibuprofen, a sleeping little pack, I don't
5 remember what the name of it is, it's not like a
6 drug, it's some type of an herbal thing.
7 Q. And what is your doctor's name?
8 A. Dr. Eugene Muzykanski.
9 Q. And spell his last name, if you can?
10 A. M-U-Z-Y-K-A-N-S-K-I, I think it is, or
11 S-K-Y, maybe.
12 Q. And is this your primary care physician?
13 A. Yes, he is.
14 Q. Okay. And you've seen him in the past?
15 A. Several times.
16 Q. Okay.
17 A. I go for regular doctor's appointments.
18 Q. And when did you see him in relation to
19 when you found out that there was a positive test
20 for marijuana? How long after?
21 A. Like five or six days after. After I
22 went down to IAD and they, you know, told me that
23 I was going to be assigned to the call back unit.
24 Q. Okay. And why was it that you waited

1 five or six days to see the doctor? Was that your
2 choice or was that because of the doctor's
3 schedule?
4 **A. Well, I was busy trying to get an**
5 **attorney. I probably wasn't really thinking**
6 **clearly.**
7 Q. Okay. When you went down, you talked
8 about how you wanted to take another drug test?
9 **A. That's what I told my doctor, and he said**
10 **that he would write up an authorization for it.**
11 Q. And did you take another test then?
12 **A. He gave me the form, right outside his**
13 **office is the Quest Diagnostics Laboratory,**
14 **brought the form in there, went into the bathroom**
15 **and gave them my urine sample.**
16 Q. You provided a urine sample?
17 **A. Correct.**
18 Q. Did you provide any other samples?
19 **A. On that date?**
20 Q. On any other date? On a different date?
21 **A. After a week or two, after I got the**
22 **results from that, it was negative, I forwarded**
23 **that to you and then I had talked, you know,**
24 **people on the police department were calling me**

1 correct?
2 **A. That is correct.**
3 Q. And you indicated that you also provided
4 another test?
5 **A. Yes, I did.**
6 Q. And what was that?
7 **A. I went to a laboratory that conducted a**
8 **hair follicle testing, I went to the lab, they cut**
9 **my hair and sent it off to the laboratory for**
10 **testing, and that also came back negative.**
11 **MR. HERBERT:** And if I can mark as
12 Respondent's Exhibit Number 4.
13 (The document was marked as Respondent
14 Exhibit Number 4 for identification.)
15 **BY MR. HERBERT:**
16 Q. First of all, before I get into this,
17 explain how it is that you provided this hair
18 sample?
19 **A. I went to the lab, told them that I**
20 **wanted to have a drug test, a hair sample given,**
21 **and they brought me into a room, the technician**
22 **cut my hair, put it in an envelope, some rubber,**
23 **sealed it up and sent it to the laboratory for**
24 **testing.**

1 and telling me -- you know, I had a lot of people
2 telling me what to do.
3 **MR. HERBERT:** If I could mark as Respondent's
4 Exhibit A --
5 **HEARING OFFICER WALKER:** You already have a 1
6 and a 2. So this would be 3.
7 **MR. HERBERT:** Thank you.
8 Respondent's 3.
9 (The document was marked as Respondent's
10 Exhibit Number 3 for identification.)
11 **BY MR. HERBERT:**
12 Q. If I can show you what I am marking as
13 Respondent's Exhibit Number 3.
14 **MR. POLK:** This says 1.
15 **MR. HERBERT:** You are right. I am changing it
16 to 3.
17 **BY MR. HERBERT:**
18 Q. Do you see that document?
19 **A. Yes.**
20 Q. Okay. And is that the document that you
21 previously described which indicated that it was
22 negative for marijuana?
23 **A. Yes.**
24 Q. Okay. And that is the urine sample,

1 Q. Now, you received the results of the hair
2 test?
3 **A. Yes, about a week later they called me**
4 **and told me.**
5 Q. If I can show you what's marked as
6 Respondent's Exhibit Number 4.
7 **HEARING OFFICER WALKER:** And what is that,
8 Counsel?
9 **MR. HERBERT:** I am sorry, this is the result
10 for the hair sample.
11 **HEARING OFFICER WALKER:** Okay.
12 **MR. HERBERT:** And I am going to give you
13 copies of all these. I don't have them laid out
14 neatly.
15 **BY MR. HERBERT:**
16 Q. Can you identify that document, please?
17 **A. This is a Quest Laboratory hair sample**
18 **result.**
19 Q. Okay. And what is the result for
20 marijuana?
21 **A. Negative.**
22 Q. Negative for any other drugs as well?
23 **A. Negative for all the drugs tested.**
24 Q. Okay. Thank you.

1 **MR. HERBERT:** I have nothing further.
2 **HEARING OFFICER WALKER:** Cross-examination?
3 **MR. POLK:** Yes.
4 **CROSS-EXAMINATION**
5 **BY MR. POLK:**
6 Q. Good afternoon, Sergeant Bennett.
7 **A. Good afternoon.**
8 Q. You just talked about each of the four
9 exposures to marijuana, environmental exposures
10 that you provided to Internal Affairs, correct?
11 **A. Yes.**
12 Q. And the first one you talked about was
13 your son's room?
14 **A. Yes.**
15 Q. And that was -- was that at 2:30 in the
16 morning on July 10th, 2012, approximately?
17 **A. Yes.**
18 Q. You testified that you went into the
19 basement bedroom of your oldest son, is that
20 correct?
21 **A. Yes, I did.**
22 Q. And you said you saw smoke in the room,
23 correct?
24 **A. Right.**

1 trying to pin down what he said to Internal
2 Affairs.
3 **HEARING OFFICER WALKER:** Okay. So, yes, you
4 are attempting to impeach, but you are going to
5 have to mention the statement, when it was taken,
6 show the statement to the witness and let counsel
7 know where in the statement you are referring to.
8 So the objection is sustained but you can cure all
9 that.
10 **MR. POLK:** One moment, please.
11 **HEARING OFFICER WALKER:** So we are going to
12 need to mark that.
13 **MR. POLK:** Sure.
14 **HEARING OFFICER WALKER:** Exhibit Number 5.
15 (The document was marked as Superintendent
16 Exhibit Number 5 for identification.)
17 **HEARING OFFICER WALKER:** Is that a statement
18 to IAD, did you say?
19 **MR. POLK:** Yes.
20 **BY MR. POLK:**
21 Q. Can you please identify the document that
22 I just handed you?
23 **A. Pardon me?**
24 Q. Can you please identify the document I

1 Q. Did you report that you saw marijuana
2 smoke to Internal Affairs?
3 **A. I told them that there's strong smell of**
4 **marijuana.**
5 Q. So did you report that there was a strong
6 smell of marijuana but did you not report that you
7 saw marijuana smoke?
8 **MR. HERBERT:** I just object. It's a compound
9 question.
10 **HEARING OFFICER WALKER:** Yes. Why don't you
11 split those questions up because I am having a
12 little difficulty following you as well.
13 **BY MR. POLK:**
14 Q. Didn't you report to Internal Affairs
15 only that you smelled marijuana -- a strong smell
16 of marijuana in the room, correct?
17 **A. Correct.**
18 Q. Did you not report to Internal Affairs
19 that you saw smoke in the room?
20 **MR. HERBERT:** I would object. It's not
21 impeaching.
22 **HEARING OFFICER WALKER:** Is that the purpose
23 of your question?
24 **MR. POLK:** It is an inconsistent -- I am

1 just handed you?
2 **A. This is my Internal Affairs statement.**
3 Q. Is this a true and accurate copy of the
4 Internal Affairs statement that you provided on
5 July 17th, 2012?
6 **A. July 16th.**
7 Q. Okay, sorry.
8 The report is dated July 17th but you
9 gave the statement at 11:55 on July 16th, 2012?
10 **A. Correct.**
11 **MR. HERBERT:** And I would just -- it's a minor
12 objection but the report has two dates in it.
13 There's a date below that talks about July 16th.
14 **MR. POLK:** On each page in the upper
15 right-hand corner it says July 17th, 2012. Sorry.
16 **BY MR. POLK:**
17 Q. And when you gave the statement were you
18 represented by your attorney?
19 **A. Yes, I was.**
20 Q. Were you informed that you were required
21 to give truthful answers?
22 **A. I was required to give what?**
23 Q. That you were required to give truthful
24 answers?

1 A. Yes.
2 Q. That providing a false report could
3 result in being separated from the Chicago Police
4 Department?
5 A. Right.
6 Q. On Page -- please turn to Page 8.
7 A. Okay.
8 Q. On that day were you asked the question:
9 "I am now showing you a copy of the lab
10 results from Quest Diagnostics for your specimen
11 RT123802A which tested positive for marijuana
12 metabolites. How do you explain the presence of
13 the marijuana in your urine specimen?"
14 A. Okay.
15 Q. And did you give the answer:
16 "I will just go for the first scenario I
17 described, I can't explain how that would happen,
18 there has to be a mistake. Since being presented
19 with this information I've racked my brain trying
20 to think of how this could happen. I've thought
21 of several situations which could have possibly
22 caused a positive test. The first situation would
23 have been on 10 July, '12, at approximately 0230
24 hours. My son had his two cousins over to spend

1 HEARING OFFICER WALKER: Additionally,
2 Mr. Herbert, I don't necessarily see an
3 inconsistency with what is here and what the
4 witness testified to.
5 MR. POLK: The witness testified that he saw
6 smoke in the room and that is not in his
7 statement.
8 MR. HERBERT: And I would just argue again
9 that it's not an impeaching point.
10 HEARING OFFICER WALKER: All right. So I am
11 going to overrule the objection but you have an
12 opportunity to come back in your redirect and
13 rehabilitate.
14 You may answer the question --
15 THE WITNESS: Can you say the question again?
16 HEARING OFFICER WALKER: -- if you recall.
17 BY MR. POLK:
18 Q. Didn't you fail to report to IAD that you
19 saw smoke in the room?
20 MR. HERBERT: I am going to object to the form
21 of the question. "Failed to report," it assumes a
22 legal conclusion.
23 HEARING OFFICER WALKER: I don't know that
24 this is a significant enough point that we are

1 the night. I smelled what I thought to be
2 marijuana coming from his bedroom. I went down to
3 the bedroom. The bedroom door was closed. They
4 weren't in there, they were in the pool, but there
5 was a strong smell of marijuana in the room. I
6 looked through the room to see if I could find any
7 evidence of marijuana. After several minutes, I
8 went back upstairs and informed my wife of the
9 situation. She told me that she would handle this
10 issue with my son."

11 Did you give that answer?

12 A. Yes.

13 Q. Does it say anywhere in this answer that
14 you saw smoke in the room?

15 MR. HERBERT: And again, I would renew my
16 objection that it's not impeaching.

17 HEARING OFFICER WALKER: And why are you
18 saying it's not impeaching, Mr. Herbert?

19 MR. HERBERT: Well, first of all, I am not
20 clear -- well, I guess I will assume that he's
21 impeaching. The fact that it does not include the
22 language "smelling smoke in the air," I would say
23 that that doesn't -- that alone does not impeach
24 his testimony today. It's kind of innocuous.

1 spending this much time on it. I am going to
2 sustain the objection.

3 BY MR. POLK:

4 Q. In your response didn't you not say that
5 there was smoke in the room?

6 A. Did I not say they were smoking?

7 Q. Yes.

8 A. No, I did not say that there was smoke in
9 the room. I smelled strong smell of marijuana in
10 the room.

11 Q. In your response, didn't you not say that
12 you found tin foil cigarettes that you inferred
13 were for smoking marijuana?

14 MR. HERBERT: Again, same objection.

15 HEARING OFFICER WALKER: Sustained. You are
16 just going to have to face it. Sustained.

17 BY MR. POLK:

18 Q. Can you please describe the size of your
19 son's basement room where you encountered this
20 smell of marijuana?

21 A. It's probably about, maybe, 10 foot by 12
22 foot with maybe six foot, six inch ceiling. It's
23 got one glass block window.

24 Q. Is there any ventilation in that room?

1 A. Just the air-conditioning or heating
2 ducts, and there's a small, little flap-like
3 window in the glass block window, it's probably
4 about this big.
5 Q. Was the air-condition turned on on
6 July 10th of 2012?
7 A. Was the air-conditioning on?
8 Q. Yes.
9 A. It was in July, it might have been. I am
10 not positive.
11 Q. Did you ever have marijuana directly
12 blown on you when you were in the basement on that
13 day?
14 MR. HERBERT: Objection to form. It's vague.
15 HEARING OFFICER WALKER: Overruled.
16 BY THE WITNESS:
17 A. Did I have marijuana blown on me?
18 BY MR. POLK:
19 Q. Yes.
20 A. By somebody?
21 Q. Yes.
22 A. No. There was nobody down there.
23 Q. Did you directly observe anyone smoking
24 marijuana?

1 probably.
2 Q. And for how much of that portion were you
3 smelling marijuana?
4 A. Throughout the whole concert.
5 Q. Did you have marijuana directly blown on
6 you at the concert?
7 A. Well, it was blown in my direction, I am
8 sure, I mean there's people behind me smoking it,
9 people in front. There was a lot of people
10 smoking marijuana there.
11 Q. Was it blown directly on you?
12 MR. HERBERT: Objection, asked and answered.
13 HEARING OFFICER WALKER: Sustained.
14 BY MR. POLK:
15 Q. Now, moving on to when you were called
16 into the tire shop in late June, you testified
17 that you saw smoke there?
18 A. I said there was strong smell of
19 marijuana.
20 Q. So are you saying that you did not see
21 smoke at the tire shop?
22 A. Well, the room was smoky, I could see the
23 smoke in it, but I stayed at the -- I smelled
24 marijuana.

1 A. Did I observe my son smoking marijuana?
2 Q. Anyone?
3 A. No.
4 Q. How long were you in the basement bedroom
5 total that day?
6 A. Probably 20, 30 minutes at the most.
7 Q. Moving on to the concert, the Government
8 Mule concert, when did you say you attended that
9 concert?
10 A. It was late June, I believe, like
11 June 27th or something like that.
12 Q. And you testified that you saw smoke
13 there?
14 A. Oh, yeah.
15 Q. What was the concert venue?
16 A. It was an outdoor concert venue. I am
17 not sure what the name of the place was.
18 Q. So it was open to the air outside?
19 A. Correct.
20 Q. And you said you were at the concert for
21 approximately two hours?
22 A. That is correct.
23 Q. And --
24 A. Well, a little bit more than two hours,

1 Q. When you were asked the question that I
2 previously read by Internal Affairs on July 16th,
3 2012, as regarding the tire shop, did you give the
4 answer on Page 9 of that statement?
5 A. Yes.
6 Q. "The third situation was that I responded
7 to a request for a supervisor call at
8 approximately 110th and Michigan at a tire shop in
9 late June 2012. There's a very strong smell of
10 marijuana in the shop while I was present. I
11 don't have the RD number with me but I can provide
12 it if necessary. Arrests were made, and a weapon
13 and marijuana were recovered at that location."
14 A. Yes.
15 Q. Did you say in your statement that you
16 saw marijuana smoke?
17 MR. HERBERT: Objection, not impeaching.
18 HEARING OFFICER WALKER: And the testimony,
19 Mr. Herbert, that the witness gave, did he say he
20 smelled -- that he saw smoke around him?
21 MR. HERBERT: He said that after counsel asked
22 him did you see smoke. In order to be impeaching,
23 obviously it has to be the same question with
24 inconsistent answers.

1 MR. POLK: On his direct examination --

2 HEARING OFFICER WALKER: Sustained You are
3 going to have to do it a different way. You can't
4 ask him and then --

5 MR. POLK: He said on his direct examination
6 that he saw marijuana smoke in the room, when he
7 was describing the situation, which was the same
8 question that he was asked -- in his Internal
9 Affairs, he was asked to describe the situation,
10 and on his direct examination he said he saw smoke
11 and when he was giving his statement to Internal
12 Affairs he did not say that he saw smoke.

13 MR. HERBERT: Maybe he did, I am not sure.

14 HEARING OFFICER WALKER: I don't recall him
15 saying he actually saw the smoke at the drug bust.
16 But, yes, it's an insignificant point in terms of
17 an impeachment attempt. So the objection will be
18 sustained.

19 BY MR. POLK:

20 Q. And approximately what were the
21 dimensions of the tire shop where you smelled the
22 marijuana?

23 A. The tire shop itself was -- it's a pretty
24 big place but there's like a room in the back,

1 A. That is correct.

2 Q. And you said you smelled an odor of
3 marijuana?

4 A. Yes.

5 Q. Was the marijuana burning in the safe?

6 A. No.

7 Q. What was -- in what state was the
8 marijuana?

9 A. It's -- when you recover marijuana, you
10 put it -- whatever packaging it's in, you put it
11 in a bag, seal the bag, and put it in the safe.

12 Q. So the marijuana was in a sealed bag in a
13 safe?

14 A. Correct.

15 Q. Was the safe closed?

16 A. Well, there's like a trap -- like a trap
17 door on top of it with the cylinder, you put the
18 marijuana in there, you turn the cylinder, and
19 then it drops down into the safe. So you can't
20 reach into the safe and take anything out of the
21 safe once it's been dropped into the safe.

22 Q. So was the marijuana within a bag sealed
23 within the safe?

24 A. Right.

1 like a little storage room, whatever, that's where
2 they were apparently smoking the marijuana in
3 there. It was a long narrow room, probably about
4 15 feet long by about four foot wide, maybe.

5 Q. And how tall?

6 A. I don't know, probably eight feet,
7 something like that.

8 Q. Pardon me?

9 A. Eight feet, maybe.

10 Q. And did you have marijuana blown into
11 your face on that occasion?

12 A. No.

13 Q. And what was the ventilation of that
14 room?

15 A. Well, I don't believe there was any
16 ventilation in that room. It's within the tire
17 shop.

18 Q. And finally, you testified about
19 supervising outside of the narcotics safe in the
20 Fifth District, is that correct?

21 A. Yes.

22 Q. And you said you were there -- was it for
23 two to three weeks as watch commander, is that
24 correct?

1 Q. And approximately how far was the safe
2 from you at your desk?

3 A. Probably eight feet, maybe, away, 10 feet
4 maybe at the most. It's right outside the watch
5 commander's door.

6 Q. And how big is the room where your desk
7 and the safe were situated?

8 A. The watch commander's office?

9 Q. Yes.

10 A. Probably, I don't know, 15 feet by
11 12 feet or something.

12 Q. And how tall?

13 A. Eight feet, maybe, nine feet. I don't
14 know. I am not sure.

15 Q. You also testified that you followed up
16 with your primary care physician after you
17 received this positive test, is that correct?

18 A. Correct.

19 Q. And you testified that he said your
20 medications could have provided a false-positive,
21 is that correct?

22 A. That's what he thought. He looked up on
23 the Internet and was trying to find an explanation
24 for how it could happen.

1 Q. Did you provide the Chicago Police
2 Department with any statement from your doctor
3 saying that your medications could have caused a
4 false-positive?
5 A. **No, I don't believe I did.**
6 Q. You also testified that you subsequently
7 had a urine test performed, is that correct?
8 A. **That is correct.**
9 Q. Was that on July 16th, 2012?
10 A. **Yes, it was.**
11 Q. And you had a hair test performed, also?
12 A. **That is correct.**
13 Q. And was that on August 22nd, 2012?
14 A. **I believe so. It was sometime in August,**
15 **right.**
16 **MR. HERBERT:** No, it was the 21st, just to be
17 clear.
18 **HEARING OFFICER WALKER:** What was the date of
19 the urine test?
20 **MR. POLK:** July 16th, 2012.
21 **BY MR. POLK:**
22 Q. You testified that you gave hair for the
23 hair test?
24 A. **Pardon me?**

1 the positive result, correct?
2 A. **I assume so, yeah.**
3 Q. And that's Quest, correct?
4 A. **Right.**
5 Q. And that's the same lab that tested your
6 independent urine sample as well as your hair
7 sample, correct?
8 A. **That is correct.**
9 Q. And if you had the B vial tested, would
10 the police department have paid for that test or
11 would it have been your responsibility?
12 A. **It would have been my responsibility.**
13 **MR. HERBERT:** Nothing further.
14 **HEARING OFFICER WALKER:** Any further cross?
15 **MR. POLK:** Yes.
16 RECROSS-EXAMINATION
17 **BY MR. POLK:**
18 Q. So you believe that it would have been
19 the same lab that had performed the test on the
20 B bottle, correct?
21 A. **I assume so.**
22 Q. But you don't know for a fact?
23 A. **I don't know for a fact.**
24 Q. And you just said that you would have to

1 Q. You gave a hair sample for the hair test?
2 A. **Yes, I did.**
3 Q. Approximately how long was your hair that
4 you provided?
5 A. **Three inches long, maybe.**
6 Q. Did you have to pay to have your urine
7 test and hair test performed?
8 A. **Yes, I did.**
9 Q. Were you provided with the opportunity to
10 have your B bottle tested from your Chicago Police
11 Department urine test?
12 A. **Yes.**
13 Q. Why didn't you have that test performed?
14 A. **I didn't see the necessity in having it**
15 **tested.**
16 Q. So you didn't see the necessity in having
17 the positive test result retested?
18 A. **Right.**
19 **MR. POLK:** No further questions.
20 **HEARING OFFICER WALKER:** Redirect?
21 **REDIRECT EXAMINATION**
22 **BY MR. HERBERT:**
23 Q. With regard to that B vial, that would
24 have been tested at the same place that produced

1 pay for the B bottle to be tested out of your own
2 funds, correct?
3 A. **That's what I was told by the sergeant in**
4 **Internal Affairs.**
5 Q. But you did pay out of your own funds to
6 have the test performed on July 16, 2012, and the
7 hair test performed on August 21st, 2012, correct?
8 A. **That is correct.**
9 **MR. POLK:** Nothing further.
10 **MR. HERBERT:** Nothing else.
11 **HEARING OFFICER WALKER:** All right. Thank
12 you. You may step down. Don't forget your
13 microphone.
14 (Witness excused.)
15 (The witness was duly sworn.)
16 JEAN BENNETT,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:
19 **DIRECT EXAMINATION**
20 **BY MR. HERBERT:**
21 Q. Good afternoon, ma'am. How are you?
22 A. **Good.**
23 Q. Would you please introduce yourself and
24 spell your last name for the court reporter?

1 A. Jean Bennett. B-E-N-N-E-T-T.
2 Q. And how do you spell your first name?
3 A. J-E-A-N.
4 Q. And, Miss Bennett, you are married to my
5 client, isn't that correct?
6 A. Uh-huh.
7 Q. You have to say yes.
8 A. Yes.
9 Q. Okay. How long have the two of you been
10 married?
11 A. Twenty-two years next week.
12 Q. And you are aware of the fact that there
13 was a positive drug test for marijuana in a sample
14 that was provided by Duane, isn't that correct?
15 A. Yes.
16 Q. What was your reaction when you learned
17 that there was a positive drug test for Duane for
18 marijuana?
19 A. Disbelief.
20 Q. Okay. Why?
21 A. Because he never has, never would. He
22 just wouldn't.
23 Q. And when you say "he never has, never
24 would," what do you mean?

1 was using marijuana?
2 A. Absolutely. I mean he's home every
3 night, we are home every night together, he
4 doesn't go out, I don't go out, we are homebodies.
5 Yes, I would know. I know my husband.
6 Q. And do you work?
7 A. Yes.
8 Q. Where do you work?
9 A. At a children's clothing store.
10 Q. Okay. Where else have you been employed
11 other than that?
12 A. I worked for the FBI, that's when I met
13 Duane. I was working for the FBI, when we had our
14 first child I quit and stayed home to raise kids.
15 Q. Okay. And how long did you work for the
16 FBI?
17 A. Like 12 years.
18 Q. And how long have you been employed at
19 the clothing store?
20 A. About a year.
21 Q. And as far as Duane in the community, is
22 he active in the community at all?
23 A. Yes, he always has been with the kids
24 with their sports, he's coached the kids, all

1 A. Smoke marijuana or any drugs.
2 Q. How long have you known Duane?
3 A. About 25 years. I met him when he was in
4 the academy.
5 Q. Have you ever known Duane to smoke
6 marijuana?
7 A. Never.
8 Q. How would you characterize the amount of
9 time that the two of you spend together during the
10 last year or so -- strike that, it's a poor
11 question.
12 The two of you live in the same house,
13 correct?
14 A. Yes.
15 Q. Sleep in the same bedroom?
16 A. Yes.
17 Q. And you've never known Duane to use
18 marijuana at any point, certainly not within that
19 last year, correct?
20 A. No, never.
21 MR. POLK: Objection, leading.
22 HEARING OFFICER WALKER: Overruled.
23 BY MR. HERBERT:
24 Q. Do you think that you would know if Duane

1 three of our kids.
2 Q. And were these volunteer positions?
3 A. Yes.
4 Q. And how would you characterize Duane as a
5 father?
6 A. Excellent.
7 Q. What makes him an excellent father?
8 A. He's always been there for them, loving,
9 good dad.
10 Q. I am sorry?
11 A. A good dad.
12 Q. And how about as a husband, how would you
13 characterize him as a husband?
14 A. Very good.
15 Q. What type of character do you believe
16 Duane has?
17 A. Excellent, upstanding. I mean he always
18 has been. Always -- on the police department,
19 he's always been, you know, gone above and beyond.
20 He's always come home with stories for the kids.
21 He buys candy for the poor kids and hands it out
22 to them.
23 Q. And how about his reputation in the
24 neighborhood, what's his reputation like among the

1 neighbors?
2 A. Excellent. Everybody loves him. He can
3 talk to anybody. Nobody can say a bad word about
4 him.
5 Q. Have you since discovered that marijuana
6 has been used in your house?
7 A. Yes.
8 Q. Describe -- you are aware of the fact
9 that Duane -- Duane has indicated that he walked
10 into a room after his son -- your son and a couple
11 of the cousins were in there and he smelled
12 marijuana. You are aware of that fact, correct?
13 A. Yes.
14 Q. Do you remember that incident?
15 A. Yes.
16 Q. Can you tell us what happened?
17 A. I think he got up to go to the bathroom
18 and, you know, I can hear him obviously get up and
19 go, and then he was gone for a while, I know he
20 had gone downstairs, and then I got up to see
21 where he was, and the kids were out in the pool
22 and he was down in my son's bedroom.
23 Q. And did he believe that your son was
24 smoking marijuana?

1 A. Yes.
2 Q. Do you know if that's the only time that
3 your son has smoked marijuana in the house?
4 A. No. No. He's done it several times.
5 Q. Okay.
6 A. He just won't not do it. We've -- you
7 know, I mean we are having trouble with him.
8 Q. Okay. And when did you discover that
9 that wasn't the first time that he smoked
10 marijuana in the house?
11 A. When did I discover?
12 Q. Yes.
13 A. Oh, probably a couple years ago.
14 Q. Do you know if Duane knew about your son
15 smoking marijuana in the house prior to that
16 evening?
17 A. Not -- I mean I kept it from him. I mean
18 I knew it but I think he might have smelled it on
19 occasion and thought but had never caught him.
20 Q. Okay. Between your son's bedroom -- it's
21 in the basement, correct?
22 A. Correct.
23 Q. And there's an air vent in between your
24 room and your son's room, correct?

1 A. Yes.
2 Q. And what happened after that, did you end
3 up talking to your son?
4 A. Yes. Yes. He went to -- I just told him
5 that I would handle it, the kids were out in the
6 pool, he had to get up and go to work.
7 Q. And did you then speak to your son?
8 A. Yes.
9 Q. And did you find out if he and his
10 cousins were smoking marijuana?
11 A. They were denying it but I knew they
12 were. I mean I can smell it.
13 Q. How would you characterize the smell --
14 strike that.
15 Did you go into the bedroom -- his
16 bedroom, your son's?
17 A. Yes.
18 Q. And how would you characterize the smell?
19 Strong?
20 A. Yes, very strong.
21 Q. Okay.
22 A. Without a doubt I knew what it was.
23 Q. And had Duane already been in the room at
24 the point that you went into the bedroom?

1 A. Right.
2 Q. Okay.
3 A. I mean I can hear them talking down
4 there. He's right below us.
5 Q. Okay. Do you have any idea how many
6 times he smoked marijuana in that bedroom prior to
7 this night that you've testified to?
8 A. You know, a lot. I mean I don't know how
9 many times but I've found things. I found toilet
10 paper, the roll, the empty roll, and I guess they
11 put paper towels in it, or whatever, to hide the
12 smell. I've found things in his room.
13 MR. HERBERT: Okay. I have nothing further.
14 He may have some cross.
15 HEARING OFFICER WALKER: Cross?
16 MR. POLK: Very briefly.
17 CROSS-EXAMINATION
18 BY MR. POLK:
19 Q. You just testified that as far as you
20 remember, Sergeant Bennett, your husband, woke up
21 to go to the bathroom late at night that evening,
22 correct?
23 A. (No audible response.)
24 MR. HERBERT: You have to say yes.

1 **BY THE WITNESS:**

2 A. Yes. Sorry.

3 **BY MR. POLK:**

4 Q. And then at some point after that he
5 informed you that your son was smoking marijuana
6 in his bedroom basement, correct?

7 A. Correct.

8 Q. Do you know approximately how long your
9 husband was in your son's bedroom between
10 detecting the odor and informing you?

11 A. Twenty minutes, half an hour. I didn't
12 know where he was. He goes down in the bathroom
13 in the basement, that's like his bathroom, so I
14 thought that's what he was doing down there.

15 Q. And you testified that you knew about
16 your son's marijuana use before your husband did,
17 correct?

18 A. Correct.

19 Q. So it had been happening at least for a
20 while in your household before Sergeant Bennett
21 knew that it was occurring?

22 A. Yes.

23 Q. So to the best of your knowledge, had
24 Sergeant Bennett been exposed to the odor or smoke

1 I will inform the hearing officer, and
2 Mr. Polk will explain, but we had attempted to
3 work out a stipulation to the foundation to these
4 reports and I believe the City is offering a
5 partial stipulation, just to inform the hearing
6 officer.

7 **HEARING OFFICER WALKER:** All right. We should
8 probably deal with the stipulation first and then
9 let me see what document is being offered into
10 evidence and whether or not there are any
11 objections to that.

12 **MR. HERBERT:** Okay. I will explain.

13 **HEARING OFFICER WALKER:** So let's deal with
14 Exhibit 3 first.

15 **MR. HERBERT:** Okay.

16 **HEARING OFFICER WALKER:** Would the stipulation
17 have any bearing on Number 3?

18 **MR. POLK:** Yes. We would object as to the
19 foundation of Exhibits 3 and 4.

20 **HEARING OFFICER WALKER:** Oh, okay. So there
21 is no stipulation?

22 **MR. POLK:** We -- as Mr. Herbert just
23 discussed, we have been in communication and he
24 has requested that the city stipulate, and the

1 of marijuana prior to July 10, 2012?

2 A. I am sure if he was down in his room
3 smoking it, it would come up the vents. I mean
4 I've smelled it in my room. So I am sure he's
5 been in contact with it.

6 Q. But you just testified that he did not
7 know about it before that night, correct?

8 A. Well, but he would be sleeping. I mean
9 it would be in the middle of the night.

10 **MR. POLK:** Thank you. Nothing further.

11 **MR. HERBERT:** Nothing else.

12 **HEARING OFFICER WALKER:** Anything else?

13 **MR. HERBERT:** No.

14 **HEARING OFFICER WALKER:** Thank you, ma'am.
15 Don't forget your microphone.

16 (Witness excused.)

17 **HEARING OFFICER WALKER:** Any further
18 witnesses?

19 **MR. HERBERT:** No further witnesses.

20 **HEARING OFFICER WALKER:** Okay.

21 **MR. HERBERT:** I would just -- at this point I
22 would like to introduce the lab results that were
23 identified as Respondent Exhibit Number 3 and
24 Respondent Exhibit Number 4.

1 city continued to request additional documentation
2 about these two tests that were performed.
3 Yesterday, Mr. Herbert provided
4 additional documentation. So as a result of that
5 documentation, the city is willing to stipulate
6 that these documents on their face show that a
7 urine test was performed and those are the
8 results, and the hair test was performed and those
9 are the results, but we do not agree to stipulate
10 to the collection of the samples and the chain of
11 custody.

12 As you know, the documentation that the
13 city provides with this drug test includes an
14 affidavit from the collector. This documentation
15 doesn't have anything like that. It doesn't have
16 any information about testing for dilution or
17 adulterants in the samples. There's no
18 information from -- of any review by certifying
19 scientists that the chain of custody was intact.
20 And particularly, the urine test does not even
21 show any of the thresholds for positive or
22 negative tests. It just says negative for each of
23 the drugs that were tested for.
24 Similarly, for the hair test, Exhibit 4,

1 there's no information about the chain of custody
2 or the collection, and there's no information
3 about the hair other than the fact that it was
4 collected from his head. Nothing about the hair
5 length or if it was treated in any way.

6 **HEARING OFFICER WALKER:** All right. Well,
7 let's deal with this one step at a time.
8 First of all, I do not have a copy of 3
9 or 4, Exhibit Numbers 3 or 4.

10 **THE VIDEOGRAPHER:** Going off the record. I
11 just have to change tape.

12 **HEARING OFFICER WALKER:** Oh, all right.
13 (Pause.)

14 **THE VIDEOGRAPHER:** Proceed.

15 **HEARING OFFICER WALKER:** Okay.

16 **MR. HERBERT:** Madam Hearing Officer --

17 **HEARING OFFICER WALKER:** Yes.

18 **MR. HERBERT:** -- I tendered you Respondent's
19 Exhibits 3 and 4. Just as a way of introduction,
20 I attempted to get everything to establish the
21 chain in this case, and what has been reported to
22 me is that I have every document that is necessary
23 and every document in existence to establish this
24 chain.

1 **HEARING OFFICER WALKER:** Well, first of all,
2 it appears to me -- you passed up to me it looks
3 like five sheets of papers as Exhibit 3, and the
4 first three -- I mean there's even health
5 insurance information here that I wouldn't need.
6 **MR. HERBERT:** Right.

7 **HEARING OFFICER WALKER:** And --

8 **MR. HERBERT:** Perhaps I can redact some of
9 that information.

10 **HEARING OFFICER WALKER:** Yes. You know, just
11 bring it down to -- okay.

12 So the collection date is on this one,
13 there are no results on this page, and then this
14 first page again is insurance information.

15 **MR. HERBERT:** I believe it provides just the
16 date in which he went down there.

17 **HEARING OFFICER WALKER:** Yes, his name,
18 perhaps, and the date, but that's also on the two
19 sheets that actually say what the results are.

20 **MR. HERBERT:** And I agree, I was just -- in
21 light of the objection -- or the refusal to
22 stipulate, I was trying to include as many
23 documents as possible to come to an agreement, but
24 I agree that not all of those documents are

1 Specifically, I asked the individuals
2 about how it does not -- it's not as detailed as
3 the chain of custody that the city provided in
4 Mr. Bennett's sample, and it was told to me that
5 there is -- there will never be a chain that
6 detailed unless it's done by law enforcement.
7 But nonetheless, you can see in those
8 Respondent exhibits it talks about the specific
9 times of the collection, there's signatures there,
10 there's the label that's indicated on there,
11 there's indications that the vial was sealed and
12 it was sealed when it was received by Quest, and I
13 would state that it establishes all the foundation
14 necessary for a stipulation.

15 Obviously, if the city requires us to
16 bring in human testimony for this, and the hearing
17 officer agrees that that's necessary, then I would
18 ask for an additional date, but I would just state
19 that we stipulated to the result in their case,
20 and I think typically at the Police Board and
21 administrative hearings in general and also in
22 courtrooms, there's generally a stipulation to a
23 chain, and I would respectfully request that those
24 exhibits be entered into evidence.

1 necessary. Certainly all we want is the negative
2 results in evidence.

3 **HEARING OFFICER WALKER:** All right. And then
4 the second page seems to have the same information
5 that the second offer -- two pages have results,
6 both of them seem to have the same information.

7 **MR. HERBERT:** They do. It's just a different
8 way of -- the alternate one was provided to me
9 when I requested additional documents to satisfy
10 the chain. So again, I don't -- I don't believe
11 that both are necessary, but I was just trying to
12 provide everything.

13 **HEARING OFFICER WALKER:** So having that and
14 the possibility that these documents can be pared
15 down to what's important, I now have to deal with
16 your -- what you determine as your partial
17 stipulation. Usually I would like to have
18 stipulations in writing, as we talked about
19 before, so I can kind of read just what it is that
20 you are stipulating to, but if I am following you,
21 and I am just dealing with 3 right now, the
22 Department is stipulating that these are results?

23 **MR. POLK:** Yes.

24 **HEARING OFFICER WALKER:** And that these

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1 results do belong to Mr. Bennett?
2 **MR. POLK:** We have not stipulated that they
3 belong to Mr. Bennett.
4 **HEARING OFFICER WALKER:** Okay. Just tell me
5 again what it is that you are stipulating to.
6 **MR. POLK:** That this is a printout of a
7 negative test result from Quest Diagnostics.
8 **HEARING OFFICER WALKER:** All right. You are
9 not even stipulating as to who it belongs to?
10 **MR. POLK:** As I said, we don't have enough
11 information about the collection and the chain of
12 custody so we cannot stipulate that it is
13 specifically from a sample brought in by
14 Sergeant Bennett.
15 **HEARING OFFICER WALKER:** Okay. So it doesn't
16 seem to me that we, in essence, have a
17 stipulation, because I mean you are stipulating
18 that this paper says negative all the way down.
19 So that's not really giving us anything in terms
20 of -- so my conclusion will be that there's just
21 really no stipulation.
22 So is there -- is there an objection to
23 the entry of Respondent's 3? And I am looking at
24 the two documents that have a name on it, a date

1 merely to supplement the defense. We are not
2 claiming that they prove that the original test
3 result was faulty. We are not claiming that these
4 test results in Respondent's 3 and 4 are proof
5 that the machine was inaccurate or that an
6 inaccurate result was generated. We are not
7 disputing the positive result.
8 What Respondent's 3 and 4 do is they
9 support the affirmative defense in this case,
10 which is that it was environmental exposure. And
11 also, I would note that those -- that Respondent's
12 3 and 4 were also tested at the same lab. I
13 certainly believe that there's evidence that
14 indicates when it was collected, by whom it was
15 collected, there's signatures, there is no
16 affidavits, I will agree with that, but the Board
17 is allowed to give these documents whatever weight
18 it chooses to give and Mr. Polk is correct that
19 there is no indication as to what a minimum
20 threshold level is, but the Board can use that if
21 it so chooses to factor in a weight analysis to
22 the results. But I would claim again that in no
23 way invalidates these results and certainly it
24 does not bar them from introduction.

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1 of birth, and a panel of what appears to be
2 substances that were tested and what the results
3 were. So what is your objection to the request
4 that the document be entered into evidence?
5 **MR. POLK:** Foundation.
6 **HEARING OFFICER WALKER:** What do you mean by
7 that?
8 **MR. POLK:** That it does not establish chain of
9 custody from Sergeant Bennett to the test results.
10 **HEARING OFFICER WALKER:** Okay. That's the
11 extent of your objection?
12 **MR. POLK:** And as I further admit, there's no
13 necessary review and, of course, there's no --
14 there's a blank column for "Reference Range,"
15 there's nothing that indicates what constitutes a
16 positive or negative result. There are no
17 thresholds. So for all of those reasons, we would
18 object to foundation of this document as far as
19 actually specifically being for the truth of the
20 matter asserted that he tested not negative for
21 all of those substances on that day.
22 **HEARING OFFICER WALKER:** Your response?
23 **MR. HERBERT:** In response, I would first of
24 all note that these test results are being entered

1 **HEARING OFFICER WALKER:** Well, if I were to
2 summarize what you are saying that they have no
3 purpose in your main case, then why is it being
4 submitted for evidence?
5 **MR. HERBERT:** Well, that's not what I meant.
6 If that's how it came out, I apologize.
7 What I am saying is that it doesn't
8 refute the city's evidence regarding the positive
9 test result. It absolutely is integral to our
10 case to show that it's in support of our
11 affirmative defense that it was environmental
12 exposure and not intentional use.
13 **HEARING OFFICER WALKER:** But none of that
14 cures the requirements of a document as long as
15 there's an objection to be admitted. It still has
16 to reach the -- at least the threshold
17 requirements for admission. It is then up to the
18 Police Board to give it whatever weight the Police
19 Board wishes, but the document itself to be
20 admissible would have to meet those requirements.
21 **MR. HERBERT:** Right. If there's no
22 stipulation then, as I said, I am going to have to
23 bring in live witnesses. So I am going to ask for
24 another date if we cannot work this out.

<p style="text-align: right;">Page 172</p> <p>1 HEARING OFFICER WALKER: Because the 2 Department's objections are valid ones to get this 3 document in for it to have any meaning -- for it 4 to be meaningful. 5 So, I am going to sustain the objection 6 unless it can be cured. 7 MR. HERBERT: Okay. If I can just also get 8 maybe a ruling on the record as to -- I am not 9 sure how many people the city is going to require 10 because, you know, these test results -- or these 11 samples are sometimes sent out via UPS. I am not 12 sure if they want every person that had contact 13 with this. 14 HEARING OFFICER WALKER: It's not what the 15 city wants. It's what is required by the rules. 16 I know that you are a very able attorney, so you 17 will know what those requirements are. I don't 18 see that you need more than one person. You just 19 have to decide which is that person that has all 20 of that information, if in fact it's only one 21 person that has all that information. 22 The basic requirements for a document, 23 you said something about signatures. I don't see 24 any signatures here. I see something under what</p>	<p>1 this attached page but there's still no 2 information about the collection and about how the 3 specimen was transmitted, and there's certainly no 4 information about the quality of the specimen 5 provided, length of hair, if it was dyed or 6 treated in any way. It is again just kind of a 7 freestanding test result. So again, we would 8 object as far as foundation. 9 HEARING OFFICER WALKER: Mr. Herbert, your 10 response? 11 MR. HERBERT: No response. If if they are not 12 going to stipulate, then we will bring in a live 13 witness -- 14 HEARING OFFICER WALKER: Okay. 15 MR. HERBERT: -- or live witnesses. 16 HEARING OFFICER WALKER: Right. And there is 17 information on this one as to the collector's 18 name, I see. There's a section for a medical 19 review officer but that is not completed. 20 MR. HERBERT: Because there was no -- 21 HEARING OFFICER WALKER: I am not sure if it 22 was necessary. 23 MR. HERBERT: Right, there was no medical 24 review officer.</p>
<p style="text-align: right;">Page 173</p> <p>1 was ordered, it says a physician's signature, 2 which of course is not readable because it's 3 probably signed by a physician. But other than 4 that, in terms of any signatures as to the actual 5 performance of the test, I don't see any here. I 6 see a doctor's name written. I don't know if 7 that's the doctor who ordered the exam. 8 MR. HERBERT: The doctor that collected the 9 exam, the time at which it was collected, the 10 sample number is indicated on there. 11 HEARING OFFICER WALKER: Is this Eugene? 12 MR. HERBERT: Yes. 13 I agree, if we don't have a stipulation, 14 then we have to have a live witness. 15 HEARING OFFICER WALKER: And then you need to 16 kind of clean up those pages. 17 MR. HERBERT: I will. 18 HEARING OFFICER WALKER: I will give those 19 back to you. So that's 3. 20 Now let's look at 4. You are attempting 21 to enter 4 into evidence. Okay. Any objections 22 on the part of the Department? 23 MR. POLK: We similarly would object. There 24 is more documentation about chain of custody with</p>	<p style="text-align: right;">Page 175</p> <p>1 HEARING OFFICER WALKER: Okay. And then a 2 result. 3 Now, this seems to have a bit more 4 information as to the results, the second page, 5 which is the lab report. 6 Is Quest Diagnostics the same testing lab 7 that the Department uses? 8 MR. POLK: Quest Diagnostics is the umbrella 9 company but, yes, in fact, specifically this was 10 the same facility, this is the Lenexa facility of 11 Quest Diagnostics which is where the police 12 department urine sample was sent. 13 HEARING OFFICER WALKER: Okay. So you know 14 what you need to do, correct? 15 MR. HERBERT: Yes. 16 HEARING OFFICER WALKER: Okay. So the 17 objection is sustained until it can be cured. 18 MR. HERBERT: So we will not rest then. 19 HEARING OFFICER WALKER: That is correct. 20 So logically, then, your rebuttal 21 can't really go forward until they've rested 22 because we don't know what's going to come out, if 23 anything -- 24 MR. POLK: Yes.</p>

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1 **HEARING OFFICER WALKER:** -- from those
2 persons.
3 So is your expert here?
4 **MR. POLK:** She should be, yes.
5 **HEARING OFFICER WALKER:** She's on her way?
6 **MR. POLK:** She was planning on arriving at
7 2:00. So she's probably waiting in the --
8 **HEARING OFFICER WALKER:** So we won't be able
9 to use her.
10 **MR. POLK:** Yes. If we can't rebut today, yes.
11 **HEARING OFFICER WALKER:** All right. Other
12 than getting these two documents in, do you have
13 any other witnesses --
14 **MR. HERBERT:** No.
15 **HEARING OFFICER WALKER:** -- that we could call
16 today?
17 **MR. HERBERT:** No.
18 **HEARING OFFICER WALKER:** So let's go off the
19 record a moment and get another date.
20 (A recess was had.)
21 **HEARING OFFICER WALKER:** Back on the record.
22 Based on some off-the-record discussions
23 with both counsels, Mr. Polk has been gracious
24 enough to agree to go back to the Department and

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1 see whether, for judicial efficiency, a
2 stipulation can be reached with the Respondent in
3 order to -- pertaining to the Respondent's
4 Exhibits 3 and 4.
5 So to give you enough time to do that, we
6 are going to continue this matter to June 13,
7 2013, at two o'clock p.m. for us to -- for you to
8 come back.
9 In the interim, both counsel will be
10 working to see if a written stipulation can be
11 done that at least addresses the threshold
12 requirements for those two documents to be
13 admitted. And then once it gets before the Police
14 Board, then the Police Board can give it whatever
15 weight it wishes. Okay?
16 **MR. HERBERT:** Okay. Thank you.
17 **HEARING OFFICER WALKER:** I will see you then.
18 You are welcome.
19
20
21
22
23
24

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1 STATE OF ILLINOIS)
2) SS.
3 COUNTY OF WILL)
4 I, PAMELA S. MORGAN, Certified Shorthand
5 Reporter and Notary Public in and for the County
6 of Will and State of Illinois, do hereby certify
7 the above hearing was recorded stenographically by
8 me and reduced to written form by means of
9 Computer-Aided Transcription.
10 I further certify that the foregoing
11 transcript is a true, correct and complete record
12 of the testimony given and of all proceedings had
13 before me.
14 I further certify that I am not a relative,
15 employee, attorney or counsel of any of the
16 parties, nor financially interested directly or
17 indirectly in this action.
18 In witness whereof, I have hereunto set my
19 hand and affixed my seal of office at Joliet,
20 Illinois, this _____ day of June, A.D. 2013.
21
22
23 PAMELA S. MORGAN, CSR
24 084-001687

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